

TO: Judiciary Committee of the Connecticut General Assembly
FROM: Atty. Dennis O'Brien, 120 Bolivia Street, Willimantic, CT 06226
RE: Raised Bill #5502, Section 2: An Act Concerning Municipal Power to
Obtain a Search Warrant: Hearing on 3/19/12 @ 1:00 p.m.
DATE: March 18, 2012

Chairmen Fox and Coleman, members of the Judiciary Committee,

I am Attorney Dennis O'Brien of Willimantic. I am town attorney for several towns.

I am here in support of Raised Bill #5502, Section 2, an Act Concerning Municipal Power to Obtain a Search Warrant.

For as long as anyone can remember, as a matter of public policy in the interests of public health and safety, like all other states, Connecticut has enabled our towns to adopt and enforce planning and zoning regulations.

Local planning and zoning regulations are enforced by a local official charged with the enforcement of any zoning regulation adopted under State law. The enforcing official is usually called the zoning agent, zoning enforcement officer or ZEO, and works under the supervision of a normally elected planning and zoning commission.

Section 8-12 of the General Statutes is entitled "Procedure when regulations are violated." Section 8-12 expressly provides that the zoning agent "shall be authorized to cause any building, structure, place or premises to be inspected and examined and to order in writing the remedying of any condition found to exist therein or thereon in violation of any provision of the regulations made under the authority of this chapter . . ."

Typically, zoning enforcement officers respond to citizen complaints of neighborhood nuisances in violation of the zoning regulations. In response to a complaint, the zoning agent visits the allegedly offending property and assesses the situation. Typically, such inspections are conducted with the consent of the owner, out of doors on the property in the "curtilage" area of the premises.

If the zoning agent concludes that there is a violation of a local regulation the agent will informally attempt to get the owner to comply. If there is no compliance, under section 8-12 of the General Statutes, the zoning agent may issue a citation. If the citation does not result in compliance, sections 8-12 and 8-12a of the General Statutes provide means for compelling compliance by going to the Superior Court.

In most cases, even if the zoning agent cannot go on the property, an offsite view, often from the property of a complaining neighbor, provides sufficient information to determine if the complaint is justified, but sometimes this is not so, as in a case very recently decided by our Connecticut Supreme Court.

In **Town of Bozrah v. Anne D. Chmurynski**, SC 1824, CT Law Journal 2/14/12, our Supreme Court ruled that the authority of a zoning agent to inspect premises to try to determine if a zoning violation exists on the property is subject to the rights of a citizen to be free from unreasonable search and seizure per the Fourth Amendment to the Constitution of the United States.

I of course fully agree with our Supreme Court's holding in this case. The problem is that because there is no State law that would permit a local official like a zoning agent to simply seek a search warrant from a superior court judge based on probable cause, our Supreme Court had no choice but to require a remedy in the **Bozrah v. Chmurynski** case that is unduly burdensome on Connecticut municipalities, and also on our courts.

As a result of this otherwise excellent decision, now, if a local zoning agent receives a complaint from a neighbor that a zoning violation exists next door, but cannot be sufficiently sure without being able to go on the property to inspect, the agent must go to the great trouble of filing a lawsuit, seeking an injunction in the Superior Court.

In addition to having to incur a court filing fee of \$300, marshal's service fees, attorney's fees and other costs for an injunctive action, all things considered, this process will be overly time consuming and expend precious public resources of our towns and our courts in these times of fiscal crisis.

The decision in *Bozrah v. Chmurynski* was issued by the Supreme Court after the beginning of this legislative session. As a town attorney, I immediately received expressions of concern from area zoning agents.

In my reading of this Supreme Court decision, I noticed the Court's reference to General Statutes section 54-33a, which authorizes search warrants in criminal, but not in civil cases. In footnote 11, the Court added the following thought:

"Furthermore, whether a statutory procedure akin to section 54-33a should be enacted to authorize ex parte judicial orders in the circumstances presented by this case is an issue appropriately addressed by the General Assembly, rather than this court."

I readily agreed that this is a matter that should be immediately brought to the attention of the General Assembly. I hurriedly drafted the proposal that became section 2 of Raised Bill 5502, and asked my state representative to do what she could to see that it is brought to your attention as suggested by the Supreme Court.

This bill would permit the Superior Court to ensure that the Constitutional rights of all Connecticut citizens are fully protected, while enabling our towns to fulfill their legal responsibility to protect the health and safety of all residents without resulting in undue expense to municipalities and courts, and ultimately to our taxpayers. Thank you for your attention to my proposal and these remarks.

Hughes, Mary Alice

From: Linda Demikat [ldemikat@att.net]
Sent: Monday, March 19, 2012 12:04 AM
To: Rep. Kirkley-Bey, Marie
Subject: FW: Governor's proposal effecting retired teachers

Representative Marie Lopez Kirkley-Bly

Legislative Office Building

Hartford, CT 06106-1591

Dear Representative Kirkley-Bly:

I sincerely request your assistance and support with my and many of Connecticut's retired teachers' concerns regarding Governor Malloy's proposed changes that will affect our retirement.

A retired teacher and school administrator, I am appalled by Governor Molloy's proposals regarding the Teacher Retirement Board and changes he wants to make, shrinking even further the pensions we have, by suggesting that we pay additional fees toward our health care benefits. Also, he wants to take over administration of STRB funds, placing them under the State Comptroller. He is attempting to pay the debts created by the State with the hard-earned retirement contributions of teachers and others who have worked many years (in my case, 41 years) to provide ourselves with well deserved pensions. Governor Malloy's actions seem to ignore and attempt to obliterate agreements made by former administrations. You are no doubt knowledgeable that many teachers still receiving their pension from the TRB retired before the Teacher Enhancement Act of 1986 so their pensions are meager at best!

The Retired Teachers' Health Insurance Fund, created in 1991 is administered by the State Teacher Retirement Board. Active teachers each contribute annually (1.25%) into the Health Fund. I believe the contributions in 2010-2011 amounted to more than 45 million dollars. Those retired teachers who have elected to participate in the State Teacher Retirement Board's Medicare supplement plan also contribute a premium share to the Health Fund which in 2010-2011 amounted to over thirty million dollars. During the past four years the premiums for the Basic TRB Plan have increased by 27%.

Under the Windfall Elimination Provision, teachers who earn social security credits from employment in addition to teaching (I am one of these) will receive a (further) reduction in social security benefits of approximately 40-50%. This Federal rule is totally unfair for any and all whom it affects, to have a formula that works against those who worked two or more jobs in order to provide for themselves in retirement.

Prices continue to go up. The Governor's proposals will deplete the amount of money retired teachers will have to pay for health care, food and housing, the very essentials of life, as well as the ever-increasing state and local taxes. No COLAs were given for the past two years, so we buy less food, conserve on gas by staying home; and pray that we stay healthy so as not to increase insurance and out of pocket expenses.

Why does the Governor want the STRB funds moved to be under the administration of the State Comptroller? So the state can more easily confiscate the money we still continue to contribute? The state already owes the TRB millions that the state never paid yearly when it was due. Granted, prior to this administration, the state did make one more delinquent payment. We have paid and continue to pay our share. Now, we are supposed to pay the state's share also? I greatly doubt the state can administer the STRB fund for the amount it currently costs which is equaled by none in the country, (\$27.00 per member).

Please help Connecticut's teachers to have a safe, more financially secure retirement after we have worked tirelessly and selflessly to educate our state's children. If possible, I will greatly appreciate hearing from you regarding these issues. Thank you for your attention to these concerns.

Sincerely,

Linda A. Demikat, Ph.D.

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